Supreme Court, U.S.
F I L E

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No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

JOHN DOE,

Petitioner,

vs.

BERKELEY PUBLISHERS, d/b/a THE BERKELEY INDEPENDENT.

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of South Carolina

---

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Does the First Amendment to the Constitution of the United States permit a newspaper to publish the name of a rape victim when the identity of the rape victim is obtained through an unofficial disclosure from a jail personnel insider?

2. May the state of South Carolina prohibit the publication of a rape victim's name when that name has not been publicly released as was the case in The Florida Star v. B.J.F.?

LIST OF PARTIES TO THE PROCEEDING

All the parties to the proceeding are set forth fully in the caption, except that the plaintiff is proceeding, as permitted by the lower court, in the fictitious name of John Doe to protect his privacy. The plaintiff's true identity is known to the defendant and is disclosed in the newspaper article that gives rise to this action.

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Section 16-3-730, S. C. Code, Ann. (Publishing name of victim of criminal sexual conduct unlawful).

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

JOHN DOE

v.

BERKELEY PUBLISHERS, d/b/a

THE BERKELEY INDEPENDENT

On a Petition for Writ of Certiorari to the Supreme Court of the State of South Carolina

John Doe respectfully petitions for a Writ of Certiorari to review the Judgment of the Supreme Court of South Carolina

I. CITATIONS OF OPINIONS AND ORDERS ENTERED IN THIS CASE

John Doe v. Berkeley Publishers d/b/a The Berkeley Independent, 329 S.C. 412, 496 S.E.2d 636 (1998). This opinion is attached as Appendix "B." On March 18, 1998, the Supreme Court of South Carolina issued an order denying the Petition for Rehearing. That order is attached as Appendix "A."

John Doe v. Berkeley Publishers d/b/a The Berkeley Independent, 322 S.C. 307, 471 S.E.2d 731 (Ct. App. 1996). This opinion is attached as Appendix "C."

John Doe v. Berkeley Publishers d/b/a The Berkeley Independent, order granting defendant's motion for directed verdict, November 7, 1994. This statement is attached as Appendix "D."

II. JURISDICTIONAL STATEMENT

The final opinion in this case was entered by the South Carolina Supreme Court on February 23, 1998, reversing the opinion of the South Carolina Court of Appeals, and is the highest South Carolina court in which Petitioner could obtain relief. The Supreme Court denied the Petitioner's application for rehearing on March 18, 1998.

This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1257.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. Amendment I, United States Constitution.

The Seventh Amendment provides: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of

trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Section 16-3-730, S. C. Code of Laws states in applicable part: Whoever publishes or causes to be published the name of any person upon whom the crime of criminal sexual conduct has been committed or alleged to have been committed in this State in any newspaper. . . shall be deemed guilty of a misdemeanor. . .

STATEMENT OF THE CASE

John Doe was falsely arrested in July 1992. While awaiting trial, John Doe was sexually assaulted by a fellow inmate. Word of a "beating" spread through the community, and the defendant's publisher received a tip that John Doe had been beaten. He called a jail insider, Colonel Meade, a Berkeley County Sheriff's Deputy, who confirmed that John Doe had been beaten and, in addition, Col. Meade disclosed that Doe had been sexually assaulted. On July 29, 1992, the publisher ran a front page story identifying John Doe (using his true name) as the victim of a

sexual assault.

The plaintiff filed a lawsuit alleging invasion of privacy and intentional infliction of mental distress. The case came on to be heard by Judge Markley Dennis and a jury on October 26, 1994. At the close of a portion of the plaintiff's case, Judge Dennis, relying on The Florida Star v. B.J.F., directed a verdict against the plaintiff.

The plaintiff timely appealed to the South Carolina Court of Appeals, which affirmed the directed verdict as to the plaintiff's cause of action for intentional infliction of mental distress but reversed and remanded the case for a trial on the issue of invasion of privacy (appendix "C").

The publisher then appealed to the Supreme Court of South Carolina, which reversed the Court of Appeals on the ground that the plaintiff's identity as a rape victim in a county jail is a matter of public significance as a matter of law (appendix "B").

After timely moving for a rehearing, which was denied by the South Carolna Supreme Court (appendix "A"), this petition for writ of certiorari followed.

The federal question involved in this

case was raised by the pleadings themselves. In answering the complaint, the defendant set up the First Amendment as a defense: "The information published by defendant in its July 29, 1992 issue concerning the plaintiff was truthful information lawfully obtained concerning a matter of public interest and significance, and, as such, is privileged under the common law and the First and Fourteenth Amendments to the United States Constitution" (Answer of Respondent).

REASONS FOR GRANTING THE WRIT

The appellant seeks a review of the opinion of the South Supreme Court, which overturned the opinion of the South Carolina Court of Appeals. The Supreme Court of South Carolina held that the identity of a rape victim is public information "as a matter of law." Doe v. Berkeley Publishers, 329 S.C. 412, 496 S.E.2d 636 (1998): "We hold that the commission of a violent crime between inmates of a county jail is a matter of public significance as a matter of law." This holding is in conspicuous variance with this Court's opinion in The Florida Star v. B.J.F., 491 U.S. 524, 105 L. Ed.2d 443, 109 S.Ct.

2603 (1989). The Court of Appeals held that whether Doe's identity was subject to publication is a question of fact to be determined by a jury. See Doe v. Berkeley Publishers, 322 S.C. 307, 471 S.E.2d 731 (Ct. App. 1996), which is precisely the holding in this Court's opinion in The Florida Star.

The trial court directed a verdict against the appellant, holding that the United States Supreme Court decision The Florida Star permits the appellee newspaper to publish the appellant's name as a matter of First Amendment right. Strangely, the state's highest appellate court is silent in construing The Florida Star v. B.J.F. even though the Supreme Court is expressly overruling this Court's holding. While the Court of Appeals discussed The Florida Star extensively, the Supreme Court never mentions the case even though the trial court dismissed the case based on its reading of The Florida Star. At the trial of the case, the trial judge announced:

> We also have decisions--the Aiken case cited, I believe, talks about rights of civil action, but with respect to the invasion of privacy our Court has recognized--you're correct that they've

> cited it [The Florida Star case] and Judge Harwell expanded on it but not without qualification, but the Court cannot ignore Florida Star versus BJF and the close similarities in that case.
>
> We're dealing with a rape victim and a statute prohibiting it and a suit brought, and clearly the public interests arguments have been raised and any number of arguments, but the Supreme Court of the United Sates has decided it in my opinion (appendix, "D").

Of course, the decision in The Florida Star predicted the appearance of the present case. Justice Marshall in writing the majority opinion cautioned that the opinion was a "discrete" one and that

> . . . although our decisions have without exception upheld the press' right to publish, we have emphasized each time that we were resolving this conflict only as it arose in a discrete factual context. . . .Nor need we accept appellant's invitation to hold broadly that truthful publication may never be punished consistent with the First Amendment. Our cases have

> carefully eschewed reaching this ultimate question, mindful that the future may bring scenarios which prudence counsels our not resolving anticipatorily. . . . Our holding today is limited. . . .We accordingly do not rule out the possibility that, in a proper case, imposing civil sanctions for publication of the name of a rape victim might be so overwhelmingly necessary to advance these interests as to satisfy the Daily Mail standard. The Florida Star at pages 530, 532, 537, and 541.

Just as Justice Marshall predicted, such a case has arisen. The facts are not in dispute. John Doe was falsely accused of a crime. While he was incarcerated prior to trial (there never was a trial; the Grand Jury refused to indict him), he was raped by a fellow inmate. The publisher of the local newspaper telephoned a jail insider, a Colonel in the Berkeley County Sheriff's Department, who disclosed John Doe's identity as a rape victim. The publisher then ran the story on his front page.

At the trial of the case, both parties

relied upon The Florida Star, the appellant for the proposition cited above, and the appellee cited the case for the proposition that the newspaper could publish the information. The factual distinction between The Florida Star and the present case is not a matter of dispute. In The Florida Star the newspaper acquired B.J.F.'s name by obtaining an incident report in the press room. In the present case, the newspaper obtained John Doe's name from a surreptitious telephone call. Thus this case turns on an analysis of whether disclosure of Doe's name by a jail insider in a phone call is the same type of public disclosure that permitted the publication of B.J.F.'s identity in The Florida Star. The appellant contends that such disclosure is clearly not a "public" disclosure, and that the discrete facts of this case make this case precisely the one anticipated by Justice Marshall in the opinion in The Florida Star.

Moreover, at the trial of the case, the plaintiff called a former sex crimes prosecutor as a witness. At trial, the appellant questioned this witness regarding the publisher's resistance to protecting rape victims' privacy, and she explained the

compelling state interest in such protection: "I remember discussing it [the statutory prohibition against publication of a rape victim's identity] and telling him [the publisher in the present case] that the whole point of the law is to encourage people to be able to report rape crimes, because if we don't have the cooperation of the victims of these crimes we cannot prosecute" (Appendix "E"). South Carolina, like most states, has a statute that prohibits the publication of a rape victim's name (Section 16-3-730, S.C. Code, Ann.).

The First Amendment does not permit a newspaper to publish John Doe's identity in this case, and this Court should grant certiorari to prevent The Florida Star from becoming what this Court has so carefully guarded against--authority to publish any thing under any circumstance. The Supreme Court of South Carolina in its opinion failed to consider and abide by the holding of this Court in The Florida Star v. B.J.F.. This Court should grant certiorari to correct the error of the state Supreme Court and insure that the decisions of this court are uniformly applied across the nation.

Respectfully submitted,

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Attorneys for Petitioner

APPENDIX

APPENDIX "A"

THE SUPREME COURT OF SOUTH CAROLINA

March 18, 1998

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein
Post Office Box 71121
Charleston, South Carolina 29415-1121

Re: John Doe v. Berkeley Publishers, d/b/a The Berkeley Independent
Case No. 93-CP-08-0133

Dear Mr. Goldstein:

The Court has refused your Petition for Rehearing in the above case in the following Order:

"Petition for Rehearing is denied.

s/Ernest A. Finney, Jr. C.J.
s/Jean H. Toal A.J.
s/James E. Moore A.J.
s/John H. Waller,Jr. A.J.
s/E. C. Burnett, III A.J.

March 18, 1998."

Please be advised that the remittitur in this matter is today being forwarded to the Clerk of Court for Berkeley County.

Please be further advised that it will be necessary for you to make arrangements to retrieve Plaintiff's Exhibits 1 - 4 which were originally filed by you in this case. Due to their large size, it is not readily feasible to mail them to you. Kindly arrange to pick up the exhibits within ten (10) days of the date of this letter.

Very truly yours,

s/Clyde Davis, Jr.
CLERK

APPENDIX "A"

THE BERKELEY COURT OF APPEAL

March 18, 1994

Thomas R. Goldstein, Esquire
Beck, Cobb, Dellinger & Goldstein
Post Office Box 7121
Charleston, South Carolina 34417-7121

Re: John Doe v. Berkeley Publishers, et al.
The Berkeley Independent
Case No. 93-CP-08-0111

Dear Mr. Goldstein:

The Court has refused your Petition for Rehearing in the above-case in the following Order:

"Petition for rehearing is denied.

Alfred J. Tharp, Jr. J.
Alton B. Todd J.
Wilmer E. Moore A.J.
Alton H. Kelly, Jr. A.J.
Eli C. Bottcher, III A.J.

March 18, 1994."

Please be advised that the Remittitur in this matter is today being forwarded to the Clerk of Court for Berkeley County.

Please be further advised that it will be necessary for you to take affirmative to reinstate Plaintiff's Exhibits 1 - 4 which were originally filed by you in this case. Due to their large size, it is not readily feasible to mail them to you. Kindly arrange to pick up the exhibits within ten (10) days of the date of this letter.

Very truly yours,

s/Clyde Davis, C.J.

CLERK

APPENDIX "B"

THE STATE OF SOUTH CAROLINA
In the Supreme Court

John Doe, Respondent,

v.

Berkeley Publishers,
d/b/a The Berkeley
Independent, Petitioner.

ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS

Appeal from Berkeley County
R. Markley Dennis, Jr., Judge

Opinion NO. 24765
Heard November 6, 1997 - Filed
February 23, 1998

REVERSED

FINNEY, C.J.: We granted certiorari to review that part of the Court of Appeals' opinion which reversed the trial court's order directing a verdict for petitioner on respondent's invasion of privacy claim. Doe v. Berkeley Publishers, d/b/a The Berkeley Independent, 322 S.C. 307, 471 S.E.2d 731 (Ct.App. 1996). We reverse the decision of the Court of Appeals.

Respondent's claim is based on the petitioner's truthful reporting that respondent was the victim of a sexual assault by an inmate while both were incarcerated at the Berkeley County jail.[1] The issue in an invasion of privacy claim is whether the occurrence is a matter of legitimate public or general interest. Meetze v. The Associated Press, 230 S.C 330, 95 S.E.2d 606 (1956). While ordinarily the issue whether an occurrence meets this test is a question of fact for the jury, under some circumstances it may be a question of law for the court. Compare Hawkins v. Multi-Media, 288 S.C. 569, 344 S.E.2d 145 (1986) (whether birth of a out-of-wedlock child was a matter of legitimate public or general interest was a jury question) with Meetze, supra (birth of child to twelve year old mother on year after her marriage was a matter of public interest as a matter of law). We hold that the commission of a violent crime between inmates of a county jail is a matter of public significance as a matter of law.

The Court of Appeals reversed the trial judge, holding that "whether publishing Doe's name as the victim of sexual assault was a matter of public significance" was an issue for the jury. Doe, 322 S.C. at 314, 471 S.E.2d at 735. We disagree. The Court of Appeals erred in separating the plaintiff's identity from the event. Under state law, if a person, whether willingly or not, becomes an actor in an event of public or general interest, "then the publication of his connection with such an occurrence is not an invasion of his right to privacy." Meetze,

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[1]A fuller description of the facts can be found in the Court of Appeals' decision.

230 S.C. at 337, 95 S.E.2d at 609. Accordingly, Doe's invasion of privacy claim fails as a matter of law, and the trial court's directed verdict was proper. The decision of the Court of Appeals is therefore

REVERSED.

Toal, A.J., Moore, Waller and Burnett, JJ., concur.

APPENDIX "C"

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

John Doe, ... Appellant,

v.

Berkeley Publishers, d/b/a The Berkeley Independent, ... Respondent.

Appeal From Berkeley County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 2501
Heard January 11, 1996 - Filed April 22, 1996

AFFIRMED IN PART, REVERSED IN PART AND REMANDED

PER CURIAM: John Doe appeals the trial judge's order granting a directed verdict to Berkeley Publishers, d/b/a The Berkeley Independent ("Berkeley") on Doe's claims of invasion of privacy and intentional infliction of emotional distress. We affirm the grant of the directed verdict on intentional infliction of emotional distress; we reverse the grant of

the directed verdict on intentional infliction of emotional distress; we reverse the grant of directed verdict on invasion of privacy, and remand for further proceedings consistent with this opinion.

I. Facts

On July 15, 1992, John Doe was arrested for allegedly dousing a St. Stephens woman with gasoline and setting fire to her mobile home. He was charged with assault and battery with intent to kill, kidnapping, first degree burglary, and first degree arson. On January 15, 1993, the Berkeley County Grand Jury returned each indictment with a designation of "NO BILL."

While Doe was being held at the Berkeley County jail on these charges, a woman, who identified herself as the sister of Doe's alleged victim, called Allen Morris, the editor and publisher of The Berkeley Independent, and told him Doe had been "beaten up" in jail. Morris then contacted the Berkeley County Sheriff's Department to confirm the information. He talked to Colonel Meade, who informed him the department had an incident report reflecting Doe had been sexually assaulted while incarcerated.

Morris told one of his reporters.

Subsequently, The Berkeley Independent published a story about Doe's arrest, as well as an articles disclosing Doe's identity as the victim of a rape by a fellow inmate while being held at the jail.

II. Procedure

Doe sued Berkeley for invasion of privacy and intentional infliction of emotional distress. He filed the summons and complaint as John Doe. The trial judge ordered him to proceed using his real name. Berkeley answered, alleging because the publication was truthful, lawfully obtained, and concerned a matter of public interest, it was privileged under the First and Fourteenth Amendments to the United States Constitution.

The trial judge bifurcated the issues of liability and damages. At the close of the liability portion of the case, he orally directed a verdict for the newspaper on both causes of action. He signed a form order and requested that Berkeley's lawyer prepare a formal order. Doe appealed the directed verdict prior to the filing of the formal order. After the formal order was filed, Doe filed a motion for reconsideration, which was denied. Doe then appealed that order. He moved to use the fictitious name "John Doe"

for his appeal. The Supreme Court granted his motion.

III. Analysis of Substantive Issues on Appeal

A. Invasion of Privacy

Doe asserts the trial judge erred in direction a verdict on invasion of privacy. He argues his identity was either (1) unlawfully obtained or (2) whether it was unlawfully obtained was a question of fact for the jury.

When considering a motion for a directed verdict, the trial judge must view the evidence and all its inferences in the light most favorable to the non-moving party. If the evidence is susceptible of more than one reasonable inference, the case must be submitted to the jury. Horry County v. Laychur, ___ S.C. ___, 434 S.E.2d 259 (1993).

In directing a verdict for Berkeley on the cause of action for invasion of privacy, the trial judge relied on the United States Supreme Court decision in The Florida Star v. B.J.F., 491 U.S. 524 (1989). In Florida Star, the Court adopted the following test, first enunciated in Smith v. Daily Mail Publishing Co., 443 U.S. 97, 103 (1979):

> [I]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials

may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order.

1. Lawfully Obtained

Doe argues that because South Carolina's rape shield statute makes it unlawful to disclose a rape victim's name, the Sheriff's Department unlawfully disclosed the information and, correspondingly, Berkeley unlawfully received the information. See S.C. Code Ann. §16-3-730 (1985).[1] However, the rape shield statute is a criminal statute and does not govern whether the information was lawfully obtained. Dorman v. Aiken Communications Inc.,303 S.C. 63, 398 S,E.2d 687 (1990) (construing §16-3-730 as a criminal statute created primarily for the protection of the public, and holding it does not created

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[1] S. C. Code Ann. § 16-3-730 states in full:

> Whoever publishes or causes to be published the name of any person upon whom the crime of criminal sexual conduct has been committed or alleged to have been committed in this State in any newspaper, magazine or other publication shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or imprisonment of not more than three years. The provisions of this section shall not apply to publications made by order of the court.

a private right of action). Rather, the South Carolina Freedom of Information Act governs this issue. S.C. Code Ann. §§30-4-10-110 (1991 and Supp. 1995). S. C. Code Ann. §30-4-50 declares certain matters "public information." Subsection (A) (8) includes "incident reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed." Subsection (A) (8) also notes "[w]here an incident report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the incident report." S. C. Code Ann. §30-4-50 (A) (8) (Supp. 1995) (emphasis added). Accordingly, the Sheriff's Department had discretion whether or not to delete John Doe's name from the incident report. Section 30-4-40 exempts certain matters from public disclosure, including "[i]nformation of a personal nature where public disclosure thereof would constitute unreasonable invasion of personal privacy." S.C. Code Ann. §30-4-40 (a) (2) (Supp.1995). Because the plain language of §30-40-50 contemplates the release of exempt information, the two code sections are not inconsistent and the Sheriff's Department

retained its discretion. **See Florida Star**, 491 U.S. at 536 ("the fact that, state officials are not required to disclose such reports does not make it unlawful for a newspaper to receive them when furnished by the government"); accord, South Carolina Tax Comm. v. Gaston Copper Recycling Corp., S.C. , 447 S.E.2d 843 (1994) (exemptions from FOIA impose no duty not to disclose but simply allow the public agency discretion to withhold exempted material from disclosure); **see also Mims v. Alston**, 312 S.C. 311, 440 S.E.2d 357 (specific statute controls over more general statute).

Doe also argues there is an inference the information was unlawfully obtained because the newspaper reporter picked up the incident report more than six months after the article was published. Information capable of being lawfully obtained does not become transformed with the passage of time into something unlawfully obtained. Accordingly, we find as matter of law that Berkeley lawfully obtained the information.

2. Truthfulness

It is undisputed Doe was sexually assaulted while incarcerated in the Berkeley County jail. Therefore truthfulness is not an

issue.

3. Public Significance

Doe argues the trial judge erred in granting a directed verdict because a question of fact exists whether the news article published in The Berkeley Independent concerned a matter of public significance. In **Florida Star**, the Supreme Court held a news article revealing the name of a victim of sexual assault contained a matter of public significance because "the article generally, as opposed to the specific identity contained within it, involved a matter of paramount public import: the commission, and investigation, of a violent crime which had been reported to authorities." **Florida Star**, 491 U.S. at 530. The factual dissimilarities between this case and **Florida Star** lead to the conclusion the jury should decide whether the article at issue here contained a matter of public significance.

To begin with, the plaintiff in **Florida Star** sued the newspaper for invasion of privacy based on the negligent violation of statute which made it unlawful for any person to print, publish, or broadcast the name of a victim of a sexual offense in any instrument of mass communication. 491 U.S. at 528. The

Court held imposing damages in those circumstances violated the First Amendment. The Court noted, in contrast to common law claims of invasion of privacy, the statutory scheme it was scrutinizing did not require case-by-case findings, nor did it require scienter of any kind. 491 U.S. at 539. Here Doe sued for invasion of privacy based on common law, which does require case-by-case findings.

Moreover, in **Florida Star** the article was one of 54 "police blotter" stories the newspaper ran that day. 491 U.S. at 527. Here, the articles was a sidebar to a larger article that appeared on the front page. The Florida Star alleged inclusion of the victim's name was inadvertent. Id. at 528. Under the facts presented here, it appears The Berkeley Independent did not inadvertently publish Doe's name. The editor for The Berkeley Independent testified the paper published the story to show "the irony that a person charged with a series of violent crimes had himself been the alleged victim of a violent crime." He furthermore stated deleting Doe's name from the article could have changed the story because "[Doe's] name was printed as an aspect, a valuable aspect, among many aspects

of the story." However he acknowledged the entire story could have been run simply deleting Doe's name. In fact, a report of the trial of serial rapist, in which the rape victim's name was not disclosed, ran in the same issue of the newspaper as the Doe article. Furthermore, the editor admitted The Berkeley Independent had never before published a rape victim's name. The editor characterized the two stories about Doe as "a matter of public interest and concern," because the newspaper reports crimes so people in the community can know what crimes have been committed. The editor distinguished printing Doe's name from not printing other rape victims' names because Doe was incarcerated and the other victims were not. In contrast, the reporter who wrote the article testified even though it was the paper's policy to delete the names of rape victims, this article presented a "a special circumstance" in that "[t]here was a crime committed and [Doe's name] was already listed in the story."

Issues of fact concerning Berkeley's purpose in including Doe's name bear on public significance because not every purpose will rise to the level of public significance. See

Hawkins v. Multimedia Inc., 288 S.C. 569, 344 S.E.2d 145 (whether a fact is a matter of public interest is a question of fact to be decided by the jury), cert. denied, 479 U.S. 1012 (1986);[2] cf. Meetze v. Associated Press, 230 S.C. 330, 95 S.E.2d 606 (1956) (one limitation on the right of privacy is that it does not prohibit the publication of matter which is of legitimate public or general interest; public interest is more than mere curiosity). Accordingly, we remand the issue of whether publishing Doe's name as a victim of sexual assault was a matter of public significance for a jury to determine.

B. Intentional Infliction of Emotional Distress

The trial judge directed a verdict in favor of Berkeley on Doe's intentional infliction of emotional distress cause of action, relying on Upchurch v. New York Times Co., ___S.C.___, 431 S.E.2d 558 (1993). In Upchurch, plaintiffs sued for intentional infliction of emotional distress based on an article that appeared in The Spartanburg Herald implicating cocaine use in the death of

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[2] Although this case pre-dated Florida Star, "legitimate public or general interest" may be analogized to "a matter of public significance."

their family member, Bodie Upchurch. An autopsy showed Upchurch died of an undiagnosed heart condition. The white, powdery substance found in Upchurch's nostrils was not cocaine and could have been chalk or talc used by Upchurch while weightlifting. In upholding the trial judge's grant of a directed verdict, the Supreme Court indicated that it was not necessary to address the threshold inquiry under Florida Star where there was no basis upon which to assert a cause of action for intentional infliction of emotional distress. Id. Doe did not appeal the trial judge's grant of a directed verdict based on Upchurch and thus, it became the law of the case. Resolution Trust Corp. v. Eagle Lake & Golf Condominiums, 310 S.C. 473, 427 S.E.2d 646 (1993) (an unchallenged ruling by the trial court is the law of the case). Accordingly, we affirm the trial judge on this issue.

IV. Analysis of Procedural Issues on Appeal

Doe next asserts the trial judge erred in signing a written order confirming his oral order granting Berkeley a directed verdict because the trial judge lost jurisdiction once Doe file a notice of appeal.

After orally directing a verdict for Berkeley, the trial judge asked counsel for

Berkeley to prepare a formal order. The form order entering judgment in the case, dated October 26, 1997, stated "[counsel for Berkeley] to prepare formal order." On November 4, 1994, John Doe's Notice of Intent to Appeal was filed. On November 7, 1994, the trial judge signed the formal order which was filed with the Clerk of Court's office on January 17, 1995. Although Rule 204, SCACR, provides that "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal," Rule 203(b) (1), SCACR, governs the time for service of a notice of appeal from the Court of Common Pleas:

> When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order of judgment.

(Emphasis added.) Accordingly, the trial judge did not lose jurisdiction of the case.

Doe further alleges the written order contained matters not in the record as well as inferences that should have been drawn in favor of Doe as the non-moving party. Doe fails to provide argument or supporting

authority for this error. Thus, we assume he abandoned this issue. First Savings Bank v. McLean, ____S.C.____, 444 S.E.2d 513 (1994) (appellant was deemed to have abandoned issue when he failed to provide any argument or supporting authority).

Doe also argues the trial judge erred in denying his right to proceed under a fictitious name as a victim of a rape. However, the Supreme Court granted his motion to proceed under a fictitious name. Therefore, he may proceed under this name on remand.

Accordingly, the order of the trial judge is

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

HOWELL, C.J., CURETON AND CONNOR, JJ., CONCUR.

APPENDIX "D"

[Oral order on directed verdict]

MR. GOLDSTEIN: There is a statute that has been upheld as being constitutional prohibiting the disclosure of a rape victim's name. The statute has been violated. There are so many cases that stand for the proposition that violation of a statute is evidence of negligence per se that--I mean, that alone is evidence of recklessness.

So, I mean, I have made--I have met my test, my reasonable inference test.

THE COURT: Well, this is a question that I note in reviewing the file that summary judgment was made as being novel in the Court. Certainly that's the basis at that stage, and we're at the directed verdict stage.

There is no question that we have a statute that clearly--the rape shield statute, no question about it. Certainly we know the legislative intent behind it as well.

We also have decisions--the Aiken case cited, I believe, talks about right of civil action, but with respect to the invasion of privacy our Court has recognized--you're correct that they've cited it and Judge Harwell expanded on it but not without qualification, but the Court cannot ignore

Florida Star versus BJF and the close similarities in that case.

We're dealing with a rape victim and a statute prohibiting it and a suit brought, and clearly the public interests arguments have been raised and any number of arguments, but the Supreme Court of the United States has decided it in my opinion.

That's what I am called upon, and that's what I have elected to do. It's a tough job.

It's what they elected me to do, to hear the law and apply it. Given that application, given the Meetz case, I would grant Defendant's motion for direction of verdict in that cause of action.

As to the second cause of action, intentional infliction of emotion distress--maybe it's the first cause of action--I think clearly the Upchurch case, together with the other cases cited, establish a foundation for the intentional infliction of emotional distress.

As to that cause of action, intentional infliction of emotion distress--maybe it's the first cause of action--I think clearly the Upchurch case, together with the other cases cited, establish a foundation for the intentional infliction of emotional distress.

As to that cause of action, based on the facts of this case, the direction of verdict is almost mandated, and, therefore, I grant the Defendant's motion for direction of verdict as to both causes of action.

MR. BENDER: Thank you, Your Honor. Would you like me to prepare the Order?

THE COURT: Yes. So that it is clearly and succinctly stated. (Whereupon, jury was excused by the Court)

[TESTIMONY OF BARBARA DUPREE]

I remember on three occasions telling him distinctly that it's not the law, and explaining to him what the law is that he cannot do this at all.

MR. BENDER: Objection, Your Honor, to this witness'
statement about what the law is. I think that is exclusively your province.

A. Thank you. I just distinctly remember tell him on three occasions that it wasn't and he wanted to continue arguing with me, at which time I discontinued the conversation and walked away.

Q. Did you admonish Mr. Morris about publishing the names of rape victims?

A. I remember discussing it and telling him that the whole point of the law is to encourage people to be able to report rape crimes, because if we don't have the cooperation of the victims of these crimes we cannot prosecute.

If that child or that person does not testify you do not have a case.

Q. Now, I put up there for you to look at some documents that have been marked as Plaintiff's Exhibits 5, 6, 7,and 8. I hope I got the numbers right.

A. Yes.

Q. Do you know--can you identify those documents as to what they are?